IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9642 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAM BHANUSHANKER TRIVEDI

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

Mr. Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution of India has challenged the detention order passed against him under the Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short) by the District Magistrate, Bhavnagar on

21.7.2000 in exercise of the powers conferred upon him under section 3(1) of the PASA Act and from 21.7.2000 present petitioner is under detention.

#. The ground of detention placed on record reveals that 3 crimes before Palitana (Rural) Police Station were registered against the present petitioner under sections 379,380,453 and 114 of Indian Penal Code for the theft of electric cables and other house hold things. The crimes were registered on 7.8.1998, 10.5.2000 and 14.6.2000 respectively. The detaining authority considered the investigation carried out on the above said crimes and statements of 4 witnesses who on assurance of annonymity narrated the incident of 27.6.200 and 29.6.2000 wherein present petitioner had beaten the witness concerned. From the above material the detaining authority reached to a conclusion that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act. The detaining authority also mentioned in the order that he had personally called the witness and had verified the contents of the statement made by them. He has further observed that the statements were carefully and scrupulously studied and thereafter the detaining authority came to the conclusion that the contents of the statements were true.

#. Learned advocate Ms. Banna Dutta for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. From the rival contentions it appears that it is vehemently urged that the order of detention is vitiated by wrong exercise of powers conferred upon the detaining authority under section 9(2) of the PASA act and therefore, subjective satisfaction based upon this fact is vitiated.

#. There is some substance in the contention raised because the facts of the present case is covered directly by the decision of this Court in Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & Ors. as reported in 1996(1) GLH 300 . This court in the decision of Jakirbhai Rahimbhai (Supra) placed reliance upon a decision of Division Bench of this Court in the matter of Koli Ashwin vs. State of Gujarat. The Division Bench of this Court relied upon the following observations made in the case of Koli Ashwin:

" However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a

> subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

In the case of Jakirbhai Rahimbhai (Supra) the court observed that the claim of privilege made by the detaining authority under section 9(2) of the Act was not genuine and to that extent the detenu was denied the opportunity of making effective representation by making and supplying to him the other details of the statements of witnesses. The court further observed that continued detention of the detenu was null and void.

#. In this case also though in the grounds the detaining authority has mentioned that he had called the witnesses and had verified the contents of the statements personally and had studied the statements scrupulously but there is nothing to denote on record the exercise as mentioned in the order was undertaken by the detaining authority. When we turn to the statements and other material we find that there is only and endorsement below the statement " verified the contents" and signature and seal of the District Magistrate. This could not be said to be sufficient material or contemporaneous record to come to subjective satisfaction that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act and that to exercise the power conferred under section 9(2) of the Act . Except the above endorsement there is no other material or sufficient contemporaneous record to reach to subjective satisfaction. The continued detention of the detenu is therefore, null and void.

###. In view of the above discussion the detention order dated 21.7.2000 passed by the District Magistrate, Bhavnagar against the petitioner under the PASA Act is set aside and quashed. The petitioner - Ganshyam Bhanushanker Trivedi is hereby ordered to be set at liberty forthwith if he is not required to be detained in custody for any other purpose. Rule is made absolute.

(J.R.Vora.J)

govindan